

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
NORTHERN DIVISION**

LARRY A. BAGSBY,

Plaintiff,

CASE NO. 00-CV-10153

v.

MAGISTRATE JUDGE CHARLES BINDER

TINA GEHRES, *et al.*,

Defendants.

MAGISTRATE JUDGE’S REPORT AND RECOMMENDATION

I. RECOMMENDATION

For the reasons set forth below, **IT IS RECOMMENDED** that the Order of Reference previously issued under 28 U.S.C. §636(c) be **VACATED**.

II. REPORT

On November 22, 2004, United States District Judge David Lawson issued an Order of Reference to this Magistrate Judge pursuant to the consent of the parties under 28 U.S.C. § 636(c). (Dkt. 274.) An appeal was taken from an opinion and order issued February 16, 2005, and on March 23, 2007, the United States Court of Appeals for the Sixth Circuit remanded the case to, *inter alia*, allow Plaintiff the opportunity to file a fourth amended complaint. (Dkt. 304-05.) Plaintiff filed her fourth amended complaint on June 25, 2007. (Dkt. 308.) Defendant Tina Gehres filed an answer and counter-complaint, which added four third-party counter-defendants. (Dkt. 314.) Those parties have recently filed answers, along with motions to dismiss. In so doing, they filed documents in which they “acknowledge the availability of the United States Magistrate Judge

but elect[] to have the case assigned to a United States District Judge.” (Dkt. 331, 336, 340, 343.)

Section 636(c)(1) consistently refers to “the consent of the parties.” 28 U.S.C. § 636(c)(1). This presumably means the consent of every party, and although there does not appear to be a Sixth Circuit case explicitly so holding, the Second, Fourth, Fifth, Seventh, and Eighth Circuits all adhere to this principle. *See New York Chinese TV Programs, Inc. v. U.E. Enter., Inc.*, 996 F.2d 21 (2d Cir. 1993); *Halsey v. Sams*, No. 94-6226, 1994 WL 564576 (4th Cir. 1994) (unpublished); *E.E.O.C. v. West La. Health Serv., Inc.*, 959 F.2d 1277 (5th Cir. 1992); *Caprera v. Jacobs*, 790 F.2d 442 (5th Cir. 1986); *Jaliwala v. United States*, 945 F.2d 221 (7th Cir. 1991); *J.C. Henry v. Tri-Services, Inc.*, 33 F.3d 931 (8th Cir. 1994).

I therefore suggest that it has now become necessary to vacate the earlier Order of Reference issued under 28 U.S.C. § 636©.

III. REVIEW

The parties to this action may object to and seek review of this Report and Recommendation within ten (10) days of service of a copy hereof as provided for in 28 U.S.C. § 636(b)(1). Failure to file specific objections constitutes a waiver of any further right of appeal. *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed.2d 435 (1985); *Howard v. Sec’y of Health & Human Servs.*, 932 F.2d 505 (6th Cir. 1991); *United States v. Walters*, 638 F.2d 947 (6th Cir. 1981). The parties are advised that making some objections, but failing to raise others, will not preserve all the objections a party may have to this Report and Recommendation. *Willis v. Sec’y of Health & Human Servs.*,

931 F.2d 390, 401 (6th Cir. 1991); *Smith v. Detroit Fed'n of Teachers Local 231*, 829 F.2d 1370, 1373 (6th Cir. 1987). Pursuant to E.D. Mich. LR 72.1(d)(2), a copy of any objections is to be served upon this Magistrate Judge.

s/ Charles E Binder

CHARLES E. BINDER
United States Magistrate Judge

Dated: September 20, 2007

CERTIFICATION

I hereby certify that this Notice was electronically filed this date, electronically served on Patrick Berrigan, C. Thomas Ludden, Jamie Nisidis, Michael Schloff and Stacy Stine; served on Tina Gehres, Timothy Hogan, and Tim Lee by first class mail, and served on District Judge Ludington in the traditional manner.

Date: September 20, 2007

By s/Jean L. Broucek
Case Manager to Magistrate Judge Binder